

Complaint Report (CCRB)

CCRB Case No :	200712538	C/V Report Date :	Thu, 08/23/2007
Complaint Type :	CCRB	Investigator :	Sarah Turner
Complaint Made At :	IAB	Ref. No	07-32413
Received Date (CCRB) :	Wed, 08/29/2007 04:14 PM	Mode :	Phone
Incident Date(s) :	Thursday, 08/23/2007 1:14 AM		
Place of Occurrence:	[REDACTED]	Precinct:	120
Location :	Street/highway	Boro:	Staten Island
Reason for Initial Contact :	Report-possession/sale of narcotics		
Charges:	Arrest - other violation/crime		

Complainant/Victim Details

Name:	[REDACTED]	Type:	Comp/Witness
Address:	[REDACTED]		
Contacts:	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]		
Gender:	[REDACTED]	Ethnicity:	[REDACTED]
Person Assisting:		Date of Birth:	[REDACTED]

Name:	[REDACTED]	Type:	Victim
Address:	[REDACTED]		
Contacts:	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]		
Gender:	[REDACTED]	Ethnicity:	[REDACTED]
Person Assisting:		Date of Birth:	[REDACTED]

Name:	[REDACTED]	Type:	Victim
Address:	[REDACTED]		
Contacts:	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]		
Gender:	[REDACTED]	Ethnicity:	[REDACTED]
Person Assisting:		Date of Birth:	[REDACTED]

Name:	[REDACTED]	Type:	Reporting Non-Witness
Address:	[REDACTED]		
Contacts:	[REDACTED]	[REDACTED]	

Gender:

Person Assisting:

Ethnicity:

Date of Birth:

Officer(s) Named in Complaint

Rank	Officer	S/W Officer	Tax No	Race	Cmd	Allegations/Board Dispositions
POM	Manuel Sepulveda	Subject Officer	929157	Hispanic	120	Physical force - (punched/kicked/kneed) - (F) Exonerated
POM	Manuel Sepulveda	Subject Officer	929157	Hispanic	120	Vehicle search - (A) Exonerated
POM	Frank Lupo	Subject Officer	928677	White	120	Physical force - (punched/kicked/kneed) - (F) Exonerated
POM	Frank Lupo	Subject Officer	928677	White	120	Vehicle search - (A) Exonerated
	An officer	Subject Officer				Chokehold - (F) Unfounded
	An officer	Subject Officer				Pepper spray - (F) Unfounded
	An officer	Subject Officer				Property damaged - (A) Exonerated
SGT	Robert Warshefskie	Witness Officer	894998	White	120	
POM	James Pedro	Witness Officer	937259	Black	120	
POM	Michael Christiano	Witness Officer	932341	White	120	
POM	Michael Brooks	Witness Officer	922943	White	120	
POM	Christophe Dagnese	Witness Officer	936422	White	120	

Initial Complaint Narrative

§ 87(2)(b) stated that there were several plainclothes officers beating a man that they were arresting. Police car #2270 was on the scene along with two unmarked cars. Sgt. Warshefskie of the 120th Precinct informed IAB that he and his SNEU team arrested § 87(2)(b) at the incident location for CPCS, CPW, resisting arrest and assault on PO Lupo. PO Lupo was taken to § 87(2)(b) Hospital to receive treatment for a bite wound on his hand. § 87(2)(b) was taken to the precinct in normal condition and a photo was taken of him. However, § 87(2)(b) was later transported to § 87(2)(b) Hospital because he began banging his head against his cell. § 87(2)(b) has no cuts and is not bleeding. Sgt. Castellano of the 120th Precinct also informed IAB that § 87(2)(b) is being hospitalized because he became angry about his arrest and began banging his head against his cell. Sgt. Tetonic of Group 9 informed IAB that § 87(2)(b) claimed he had been punched by officers and that § 87(2)(b) did have some swelling and bruising on his face and forehead. According to Sgt. Tetonic, § 87(2)(b) was pulled over by POs Sepulveda, Lupo and Christiano and found to have drugs in his mouth. Sgt. Christophe of Group 9 informed IAB that § 87(2)(b) is going to be admitted to the hospital for observation due to the ingested narcotics. X-ray results indicate that there are no broken bones and only soft tissue damage. **Note: although they are not mentioned in the narrative, POs Pedro, Brooks and Dagnese, all of the 120th precinct, are also listed on the IAB log § 87(2)(b)'s sister, § 87(2)(b) filed a duplicate complaint (#200712516). It was combined with this case and the narrative is below. § 87(2)(b) stated that her brother, § 87(2)(b) was arrested and she is not sure why he was arrested. § 87(2)(b) stated that § 87(2)(b) was beaten up by an officer and when she and another relative came to the 120th Precinct to see § 87(2)(b) she was told no, due to her attitude. § 87(2)(b) stated that her cousin saw § 87(2)(b) and he said that his face was swollen.

Witness

Name of Witness:		
Address:		
Contacts:		
Gender :		Ethnicity:
Date of Birth :		
Name of Witness:		
Address:		
Contacts:		
Gender :		Ethnicity:
Date of Birth :		
Name of Witness:		
Address:		
Contacts:		
Gender :		Ethnicity:
Date of Birth :		

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Turner	Team: Team # 3	CCRB Case #: 200712538	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/23/2007 1:14 AM	Location of Incident: on the corner of Roff Street and Bowen Street	Precinct: 120	18 Mo. SOL 2/23/2009	EO SOL 2/23/2009	
Date/Time CV Reported Thu, 08/23/2007 1:36 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/29/2007 4:14 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Manuel Sepulveda	16172	929157	120 PCT
2. POM Frank Lupo	08621	928677	120 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Robert Warshefskie	05218	894998	120 PCT
2. POM James Pedro	08628	937259	120 PCT
3. POM Michael Christiano	29474	932341	120 PCT
4. POM Michael Brooks	09312	922943	120 PCT
5. POM Christophe Dagnese	01835	936422	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Lupo	Abuse: PO Frank Lupo searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Manuel Sepulveda	Abuse: PO Manuel Sepulveda searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C. An officer	Force: An officer used a chokehold against § 87(2)(b)	
D.POM Frank Lupo	Force: PO Frank Lupo used physical force against § 87(2)(b)	
E.POM Manuel Sepulveda	Force: PO Manuel Sepulveda used physical force against § 87(2)(b)	
F. An officer	Force: An officer used pepper spray against § 87(2)(b)	
G. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	

Synopsis

On August 23, 2007, § 87(2)(b) called 911 and filed this complaint over the phone with the Internal Affairs Bureau about an incident that he had just witnessed. The complaint was referred to the CCRB on August 29, 2007, via IAB log #07-32413. § 87(2)(b) the sister of § 87(2)(b) also called the CCRB and filed a complaint about the incident, for which she was not present. On August 23, 2007, at approximately 1:15 a.m., § 87(2)(b) and § 87(2)(b) were pulled over by PO Manuel Sepulveda, PO Frank Lupo, and PO Michael Christiano and found to be in possession of narcotics and scalpels. An officer allegedly strip-searched § 87(2)(b) on the scene and pushed him against the vehicle. Another officer allegedly searched § 87(2)(b)'s vehicle (allegations A and B). An officer allegedly grabbed § 87(2)(b) by the neck and started choking him (allegation C). PO Lupo and PO Sepulveda then punched § 87(2)(b) several times (allegations D and E) before he was allegedly pepper-sprayed (allegation F). § 87(2)(b) alleged that as he was being placed in a patrol car, an officer ripped his shirt (allegation G) and he was pepper-sprayed again (within allegation F). He also alleged that several items were missing after the incident, including his ID and his shoes. [This allegation was referred to IAB under CCRB case 200800611, IAB log #08-03130.] § 87(2)(b) stated that police car #2270 was on the scene along with two unmarked cars. § 87(2)(b) sustained swelling and bruises to his face as a result of the incident. § 87(2)(b) and another relative came to the 120th Precinct to see § 87(2)(b) and they were not allowed to see him, but her cousin saw § 87(2)(b) and said that his face was swollen.

[illegible]

The case was originally assigned to Investigator Maia Armaleo but it was reassigned to Investigator Sarah Turner on September 10, 2007, because § 87(2)(b) had an open case that she was investigating.

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) on October 30, 2007 (encl. 7C-F). § 87(2)(b) also provided a statement to IAB on August 23, 2007 (encl. 7B). § 87(2)(g)

On August 23, 2007, at approximately 1:15 a.m., § 87(2)(b) was riding passenger in a rented grey minivan driven by his friend § 87(2)(b) whose last name he did not know, identified from the investigation as § 87(2)(b) on Bowen Street on Staten Island. Neither § 87(2)(b) nor § 87(2)(b) had been drinking, smoking or using any drugs, and neither of them had any drugs on them at the time. As they got to the intersection of Roff Street and Bowen Street, officers in either a burgundy van or a dark-colored Nissan Maxima turned their lights on and pulled § 87(2)(b) over. The officers approached the grey minivan, one on each side. They asked § 87(2)(b) to turn the car off, which he did, and then they asked both § 87(2)(b) and § 87(2)(b) to step out of the vehicle. PO1, a short, white male, 5'8"-5'9", 225-230 lbs., with blondish hair, wearing plainclothes, was on the driver's side interacting with § 87(2)(b) and PO2, a short

stubby white male, 5'9", 220 lbs., wearing plainclothes, with black hair, who "looked like Barney Rubble," was on the passenger's side interacting with § 87(2)(b). As soon as § 87(2)(b) stepped out of the minivan, PO2 asked him to put his hands on the minivan, which § 87(2)(b) did; PO2 then patted down § 87(2)(b) patting down each of his pockets and asking him what he had inside the pockets. PO2 did not go into any of § 87(2)(b)'s pockets.

PO2 asked § 87(2)(b) if he had anything sharp in his pockets and he told PO2 that he had a scalpel in his right front jacket pocket. § 87(2)(b) had found the scalpel a few days prior to the incident and had kept it because it was brand new and still in the wrapper. He described it as having a green plastic handle and a one-inch long metal blade. § 87(2)(b) also had a scalpel on him but § 87(2)(b) had not known that prior to the incident and did not know why § 87(2)(b) had the scalpel. PO2 took the scalpel out of § 87(2)(b)'s jacket pocket and asked him why he had it; § 87(2)(b) told him he had found it. PO2 handcuffed § 87(2)(b) and held him at the side of the minivan with his hand open-palm on § 87(2)(b)'s chest. PO2 asked § 87(2)(b) if he had ID, which § 87(2)(b) stated he did, but PO2 never looked at his ID. § 87(2)(b) thought § 87(2)(b) was searched, but he did not see this happen. PO3, a 6'0" tall, skinny white male, wearing a dark short-sleeved shirt, searched the vehicle, looking only where § 87(2)(b) had been sitting.

PO1 brought § 87(2)(b) who was also in handcuffs, to the back of the minivan, came up to § 87(2)(b) and started choking him with his right hand on § 87(2)(b)'s throat. § 87(2)(b) moved away from being choked, but PO1 came up to him again. § 87(2)(b) was sucking on a peppermint ball, which he had been doing during the entire encounter, and PO1 thought he had drugs in his mouth. § 87(2)(b) was yelling for people in the area to help him because PO1 was choking him. PO1 told § 87(2)(b) to spit it (the peppermint ball) out. A marked patrol car and another unmarked car arrived on the scene and pulled up behind the grey minivan near § 87(2)(b). Officers started punching § 87(2)(b). PO1, PO2, and at least one other officer, PO4, a 5'6" Hispanic male in plainclothes with a badge, wearing an olive green hat, were beating § 87(2)(b). He could not estimate how many times he was punched or by how many officers. PO4 was the main officer punching § 87(2)(b). An officer (he could not see which one) also pepper-sprayed him two times, while he was being punched. PO2 already had § 87(2)(b) by the throat and another officer (he could not see which one) pinched his nose to cause him to open his mouth.

§ 87(2)(b) ended up on the ground in front of the minivan. He was handcuffed the entire time and during the beating, his gold "fronts" (removable caps for his teeth) fell out. A man who witnessed the incident, § 87(2)(b) picked up the fronts and gave them to § 87(2)(b)'s wife, § 87(2)(b), after the incident. After approximately 10 minutes, the officers tried to put § 87(2)(b) in a marked patrol car. He resisted being placed in the car and had his back to the door. Officers were pushing him from the front and PO5, a uniformed 5'7" white male with black hair, pulled on § 87(2)(b)'s collar from inside the patrol car on the other side from where § 87(2)(b) was, ripping all of § 87(2)(b)'s clothes. An officer had § 87(2)(b)'s legs and his sneakers came off. § 87(2)(b) was also pepper-sprayed two additional times by an officer (he could not tell which one).

§ 87(2)(b) was taken to the 120th Precinct; § 87(2)(b) was already there. After approximately 20 minutes, he was taken to § 87(2)(b) Hospital via ambulance with PO2. At the hospital, § 87(2)(b) started "acting a fool" to try and get attention. Two officers from IAB came and interviewed § 87(2)(b). He asked these officers for identification (to prove they were IAB officers) but they refused to give him identification. § 87(2)(b)

§ 87(2)(b) PO4 said that § 87(2)(b) bit him, which § 87(2)(b) denied, saying that if he bit the officer, he would have bitten his hand off because the fronts he had on his teeth (top and bottom) were sharp.

§ 87(2)(b) and § 87(2)(b) saw § 87(2)(b) and he told them that the officers had found 2 grams of cocaine (unknown where) and they charged § 87(2)(b) with 1 gram and § 87(2)(b) with the other gram. § 87(2)(b)'s criminal complaint says that § 87(2)(b) was seen buying drugs from a guy in a wheelchair but it does not mention § 87(2)(b). He did not know where his watch, cellphone, sneakers, and ID were and he did not receive vouchers for these items. [This allegation was referred to IAB and was therefore not investigated by the CCRB.]

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) provided a phone statement to the CCRB on March 5, 2008 (encl. 8B-C) and a statement to IAB on August 23, 2007 (encl. 8A). Attempts were made to interview him in person, but he was uncooperative, therefore a verified statement was never obtained from him. His statements are combined below and any discrepancies are noted.

On August 23, 2007, at approximately 1:15 a.m., § 87(2)(b) was driving a rented minivan with his friend, § 87(2)(b). He initially recalled the incident as happening midday or early afternoon but he later confirmed that it was early in the morning. He was picking up a sandwich (he later stated that he was buying breakfast) when he ran into § 87(2)(b) and § 87(2)(b) asked him if he could drive him to 185th Street, which § 87(2)(b) agreed to do. As he turned right on Targee Street, near Vanderbilt, there was an unmarked four-door car parked and facing § 87(2)(b) approximately a block away. The car sped up and turned on its lights.

Four officers came out of the vehicle, and three of them, PO1, a 5'9", 190 lbs. white male with blondish black or reddish black hair; PO2, a 5'10" 200 lbs., white male with spiky lighter-colored hair; and PO3, a 5'8", 187 lbs. white male with short "blackish" hair and "bluish" eyes, possibly PO Lupo, approached § 87(2)(b)'s side of the van. PO4, a white male, taller than 5'10 ½", went on the other side of the vehicle with § 87(2)(b). The officers pulled § 87(2)(b) out of the van by his shirt and put him against it. PO3 told § 87(2)(b) to put his hands on the vehicle, then PO3 went into his pockets and took everything out. Another officer was holding § 87(2)(b) while PO3 was searching him, but he did not know which officer this was. At some point, PO1 and PO2 went on the other side of the van and separated § 87(2)(b) and § 87(2)(b).

The officers had § 87(2)(b) such that his legs were back up away from the van at an angle and PO3 went into his right front pocket, which held his wallet, and took his wallet and his ID out of his pocket. PO3 went into § 87(2)(b)'s front left pocket and put all of the stuff he had on top of the van. PO3 § 87(2)(b), § 87(2)(a) CVR § 50-b

PO3 also shook his pants.

While he was being searched, § 87(2)(b) could see that the officers had pulled § 87(2)(b) out of the van also and had him to the side of § 87(2)(b). He could not see what happened with § 87(2)(b) because § 87(2)(b) was at the front of the vehicle and § 87(2)(b) was at the side of the vehicle. PO3 handcuffed § 87(2)(b) and had him kneel on the ground. An officer (he could not see who) pushed his face into the van. § 87(2)(b) did not have drugs on him, but he did have a scalpel in his pocket. § 87(2)(b) also had a scalpel on him, but he did not know why or where he got it and does not normally carry a scalpel.

§ 87(2)(b) believed that the officers were beating § 87(2)(b) because he heard § 87(2)(b) say "Ow!" and he was screaming; approximately 15-20 people in the area witnessed the incident and were also screaming at the officers to stop beating § 87(2)(b). The officers told § 87(2)(b) not to move and they were telling him to "Spit it out!" § 87(2)(b) did not know what the officers meant by that; he recalled there being a lot of commotion but none of the officers beat him.

The officers picked § 87(2)(b) up and put him in a vehicle different from § 87(2)(b). Two of the officers, including PO3, transported him back to the 120th Precinct. § 87(2)(b) heard PO4 refer to PO3 as PO Lupo and he believed that was PO3's name; he did not obtain the other officers' names. § 87(2)(b) was searched at the precinct, but the officers did not find anything on him. Later, he saw § 87(2)(b) being brought in the stationhouse and the top and side of his face were huge from being beaten. § 87(2)(b) was cursing at the police, saying, "Why did you do this to me?" His clothes were ripped from the beating.

The police put evidence, a hard substance § 87(2)(b) believed to be crack cocaine, on a table and broke it into pieces. The officers put the crack cocaine in § 87(2)(b)'s cigarette box. They also "planted" some of the crack cocaine on § 87(2)(b). § 87(2)(b) denied having any drugs on him, saying he was just coming from the store.

Results of Investigation

Attempts at Complainant/Witnesses

Several attempts were made to contact § 87(2)(b) § 87(2)(b).
Between September 5, 2007 and November 26, 2007, seven phone calls were made to his last known phone number and three letters were sent to his last known address. On November 26, 2007, the undersigned investigator went to § 87(2)(b)'s last known address and spoke with his mother and his brother, Tudine. They stated that § 87(2)(b) no longer lived at that address and they did not know his current address or phone number. They took a please call letter and the undersigned investigator's business card and stated that they would have him call her when they saw him. As of the date of this report, § 87(2)(b) has not contacted the CCRB and none of the letters have been returned to the CCRB.
§ 87(2)(b) did not provide the names of any witnesses, and although § 87(2)(b) thought other people may have witnessed the incident, he could not provide contact information for anyone other than § 87(2)(b). When the undersigned investigator went to § 87(2)(b)'s building, which the incident happened in front of, letters were posted in the lobby requesting that any potential witnesses contact her regarding this incident. As of the date of this report, no witnesses have contacted the CCRB.

Identification of Officers Interviewed

PO Frank Lupo is listed as the arresting officer for both § 87(2)(b) and § 87(2)(b). In addition to PO Lupo, the IAB log lists PO Manuel Sepulveda, PO Michael Christiano, PO James Pedro, and Sgt. Robert Warshefskie as being subject officers, and PO § 87(2)(b) Brooks and PO Christopher Dagnese as being witness officers. According to the 120th Precinct roll call, PO Lupo, PO Sepulveda, PO Christiano, and PO Pedro were working SNEU on the date of the incident, and Sgt. Warshefskie was their supervisor, therefore all of them were interviewed. § 87(2)(b) stated that car 2270 was on the scene; according to the 120th Precinct roll call for tour 1, PO Brooks and PO Dagnese were assigned to vehicle 2270. As a result PO Brooks was interviewed.

Officer Statements

PO Frank Lupo

On June 27, 2008, PO Frank Lupo, a § 87(2)(b) was interviewed at the CCRB (encl 14Q-T). PO Lupo was working from 5:30 PM on August 22, 2007, until 4:35 PM on August 23, 2007, in plainclothes and assigned to SNEU with PO Christiano and PO Sepulveda. PO Lupo also completed the arrest reports for § 87(2)(b) (encl. 14G-J) and § 87(2)(b) (encl. 14K-N), and the UF61 (complaint report) regarding their arrests (encl 14D-F). The UF61 indicates that this was a pick up job of criminal sale of a controlled substance and that § 87(2)(b) and § 87(2)(b) were found to be in possession of 8.2 grams of crack cocaine and 2 surgical scalpels. § 87(2)(b) attempted to eat said crack cocaine and bit PO Lupo's partner on his right hand, breaking the skin. The arrest reports corroborate this information. PO Lupo had memo book entries that reflect that he observed two males on the corner of Roff Street and Vanderbilt Avenue exchange a small plastic bag containing a white substance for money (encl 14A-C). The two males were stopped on the corner of Roff Street and Bowen Street, both in possession of controlled substance in plainview, and were subsequently arrested. One of the males, § 87(2)(b) was taken to the § 87(2)(b) Medical Center ER and admitted for observation for attempting to ingest narcotics and facial swelling.

PO Lupo stated that on August 23, 2007, at approximately 1:15 AM, he, PO Sepulveda, and PO Christiano were driving in an unmarked rented blue Altima on Vanderbilt Avenue on their way to do observations at areas from which they had received complaints of narcotics transactions. When they got to the intersection of Roff Street and Vanderbilt Avenue, PO Lupo observed an individual, known to him as § 87(2)(b) standing on the corner of the intersection and it appeared as though he was waiting for someone. PO Lupo described § 87(2)(b) as a 5'9", Hispanic male weighing over 210 lbs., with black hair, a moustache, and an olive complexion. PO Lupo had arrested § 87(2)(b) prior to this and knew him

to be someone involved in heroin transactions, so he told PO Sepulveda, who was driving, to turn right on Roff Street so they could observe § 87(2)(b). PO Lupo's intention was to observe § 87(2)(b) for a few minutes and if nothing happened, they would leave. They parked approximately ten car-lengths away from § 87(2)(b).

Approximately five minutes later, a thin black male with short black hair using a wheelchair approached § 87(2)(b) and, under a streetlight, exchanged a small twisted bag of a golf ball-sized white substance, believed by PO Lupo to be crack, with § 87(2)(b). § 87(2)(b) then looked up, appeared to see the officers, and got into the driver's seat of a 2007 silver Kia Rondo, which had been parked behind him. PO Lupo was watching with binoculars and he saw the exchange, so he told his partners, "It's a go," and they drove over to where § 87(2)(b) was. They did not have a siren on their vehicle, but they turned on their lights and indicated that § 87(2)(b) should pull over. PO Lupo's intention was to investigate what had just happened and he was not planning on placing § 87(2)(b) under arrest, although he could have been arrested for the transaction.

§ 87(2)(b) did not stop, he merely slowed down, and PO Lupo could see him and his passenger, named by PO Lupo as § 87(2)(b), making furtive movements and moving around in the front seat for a few minutes, which appeared to him as though they were trying to hide something or reaching for a weapon. The officers got out of their vehicle and approached the Kia Rondo, which was approximately 20-30 feet from where § 87(2)(b) had made the exchange. PO Lupo approached the driver's side and PO Sepulveda approached the passenger's side; PO Christiano remained toward the rear of the vehicle on the passenger's side. The officers identified themselves as police officers and were wearing their shields on the outside of their clothing.

§ 87(2)(b) appeared nervous to PO Lupo, and he asked PO Lupo why he had pulled him over. PO Lupo looked around and leaned inside the vehicle, at which point he observed a small twisted bag of white substance in plainview on the floor of the vehicle, between the driver and the passenger seats, where a center console would normally be. There was also empty plastic wrap in the same area. PO Lupo assumed that § 87(2)(b) and § 87(2)(b) hid the crack or secreted it on themselves and he explained that according to New York State Law, whenever narcotics are discovered inside a vehicle in plainview, everyone in the vehicle is arrested.

PO Lupo signaled (he did not recall how) to PO Sepulveda that he had observed the narcotics and he asked § 87(2)(b) to step out of the vehicle. § 87(2)(b) complied. PO Lupo did not hear what was happening with PO Sepulveda and § 87(2)(b) because his focus was on § 87(2)(b). PO Lupo handcuffed § 87(2)(b), frisked him, and asked him if he had anything sharp on him. § 87(2)(b) denied having anything sharp, but PO Lupo discovered a 6" long green plastic surgical scalpel in one of § 87(2)(b)'s back pockets. There was a white substance on the blade, which indicated to PO Lupo that it had been used to break up narcotics for sale. He later became aware that § 87(2)(b) also had a scalpel on him.

PO Lupo denied opening § 87(2)(b)'s pants or sticking his hand between § 87(2)(b)'s boxers and his skin, but he admitted running his hands along § 87(2)(b)'s waistband to ensure he had no other weapons or contraband on him; he denied going into any pockets other than the one containing the scalpel. § 87(2)(b) was "very passive" during the frisk and PO Lupo did not push him against the vehicle or tell him to get down on the ground, and no other officer pushed § 87(2)(b) against the vehicle, had him get down on the ground, opened § 87(2)(b)'s pants or stuck his hand down § 87(2)(b)'s pants.

PO Lupo brought § 87(2)(b) to the rear of the vehicle, where PO Christiano and PO Sepulveda were with § 87(2)(b). PO Lupo asked § 87(2)(b) and § 87(2)(b) what they had been doing and what had transpired. § 87(2)(b) denied seeing or talking to anyone on the corner. PO Sepulveda and PO Christiano secured § 87(2)(b) and § 87(2)(b) while PO Lupo recovered the cocaine from where he had observed it in the vehicle. He denied searching anywhere else in the vehicle at that time but the vehicle was later searched in its entirety at the precinct, due to the narcotics discovery.

PO Lupo then went back to the rear of the vehicle and separated § 87(2)(b) from § 87(2)(b). He could tell that § 87(2)(b) had something in his mouth because he was speaking through clenched teeth and was moving his mouth around as if he had something in it. PO Lupo did not recall if § 87(2)(b) had any false "fronts" and § 87(2)(b) did not tell PO Lupo that what he had in his mouth was a peppermint ball. PO Lupo asked § 87(2)(b) to show him what he had in his mouth and § 87(2)(b) said, "Fuck you." As he did this, a large chunk of cocaine was visible in § 87(2)(b)'s mouth; PO Lupo again asked § 87(2)(b) what he had in his mouth and § 87(2)(b) said, "Fuck you, I'm not going there, I'm not going there."

§ 87(2)(b) who was handcuffed at this time, leaned back against the Kia Rondo such that PO Lupo was unable to reach him. PO Lupo called for PO Sepulveda to come assist him, and they told § 87(2)(b) to

spit out what he had in his mouth because if it was narcotics, he could overdose. § 87(2)(b) said, "I'm not going back to jail." PO Lupo felt as though § 87(2)(b) was under the influence of something because he was being uncooperative and was not acting rational. The officers attempted to grab § 87(2)(b) on his shoulders, at which point he leaned forward, pushed off the Kia Rondo, and pushed the officers away from him with his body, causing all three of them to fall to the ground. While they were on the ground, PO Sepulveda attempted to grab § 87(2)(b)'s jaw to get him to spit the cocaine out. § 87(2)(b) bit PO Sepulveda's right hand and held it in his mouth.

PO Sepulveda cried out in pain and began punching § 87(2)(b) several times on his face near his jaw to get him to let go of his hand. PO Lupo was also punching § 87(2)(b) in the jaw with his right fist but § 87(2)(b) did not let go. PO Lupo denied pinching or kicking § 87(2)(b) but he stated that there was a commotion on the ground and a "bunch of arms and legs." He denied putting his hands around § 87(2)(b)'s neck, but he stated that his hands may have been in that area in an attempt to pull § 87(2)(b) off of PO Sepulveda. Neither he nor PO Sepulveda put § 87(2)(b) in a chokehold or used pepper spray against § 87(2)(b). He did not see any other officer use pepper spray against § 87(2)(b). He did not recall how many times he punched § 87(2)(b) but he and PO Sepulveda only punched § 87(2)(b) until he released PO Sepulveda's hand.

After § 87(2)(b) released PO Sepulveda's hand, he started spitting out the cocaine. PO Sepulveda pulled away from the immediate area and was holding his hand. PO Lupo held § 87(2)(b) down on the ground and at this point, marked patrol cars arrived on the scene. PO Lupo assumed that PO Christiano called for assistance because several units responded. PO Lupo specifically recalled PO Brooks, PO Dagnese, and Sgt. Warshefskie on the scene, as well as the officers from Sector A (he did not recall who they were). PO Lupo informed the officers that they needed to transport § 87(2)(b) and § 87(2)(b) back to the precinct. He was not aware of what § 87(2)(b) and PO Christiano were doing while he and PO Sepulveda were trying to subdue § 87(2)(b).

The officers brought § 87(2)(b) to a sector car and attempted to get him in it; he was loud and "not happy." PO Lupo was not paying attention to what was happening with § 87(2)(b) because he was recovering as much of the cocaine off the ground as he could, but he was not aware of pepper spray being used against § 87(2)(b). People started coming out of the houses in the area, so Sgt. Warshefskie told the officers to leave the scene immediately for their safety. None of the civilians interfered with § 87(2)(b)'s arrest, but they were yelling at the officers.

PO Brooks and PO Christiano transported § 87(2)(b) back to the 120th Precinct where the desk officer advised them that § 87(2)(b) needed to go to the hospital. EMS was called and transported § 87(2)(b) to § 87(2)(b) Hospital, where he was admitted for observation for ingesting narcotics. PO Lupo went with him and he stated that § 87(2)(b) had his shoes on him at that time. He was not aware of § 87(2)(b)'s clothing being ripped during the incident. No further narcotics were recovered from § 87(2)(b).

The Kia Rondo was taken to the precinct and searched; a license plate check revealed that it was a rental under someone else's name. PO Sepulveda went to the hospital, filled out Line-of-Duty paperwork, and was out for approximately two months. No other officer, including PO Lupo, was injured to PO Lupo's knowledge. PO Lupo recognized § 87(2)(b) from the arrest photo he was shown; he confirmed that the bruising and swelling that is visible in the photo is consistent with the injuries he observed on § 87(2)(b) that day. He also recognized the arrest photo of § 87(2)(b) was "not a problem" during the entire incident.

PO Manuel Sepulveda

PO Manuel Sepulveda, a § 87(2)(b), was interviewed at the CCRB on April 9, 2008 (encl. 10D-G). PO Sepulveda was working from 5:30 PM on August 22, 2007, until 2:05 AM on August 23, 2007, assigned to SNEU with PO Lupo in an unmarked blue Altima, which he was driving. He did not recall if he was in plainclothes or in uniform. PO Sepulveda's Line-of-Duty paperwork was not available; his memo book indicates that he had two males stopped at 1:30 AM and under arrest at 1:35 AM. At 2:15 AM he transported himself and another individual to § 87(2)(b) Hospital and he was out line of duty from August 23, 2007 until September 21, 2007 (encl 10A-C).

PO Sepulveda did not recall there being any other officers in his vehicle during the incident; he only had PO Lupo listed. He stated that on August 23, 2007, after PO Lupo witnessed the drug transaction and they pulled over the white van in which the people who made the transaction were, he approached the driver's side and PO Lupo approached the passenger's side. PO Sepulveda asked the driver, whom he

described as a Hispanic male and who he later identified from his arrest photo as § 87(2)(b) for his license, registration, and insurance, but he could not recall if § 87(2)(b) provided it or not. PO Lupo indicated to PO Sepulveda that he had seen something on the floor of the van and to remove § 87(2)(b) from the vehicle. PO Lupo opened the passenger door and the passenger, whom PO Sepulveda described as a black male and who he later identified from his arrest photo as § 87(2)(b) got out of the van. PO Sepulveda opened the driver's door and § 87(2)(b) got out of the van on his own; PO Sepulveda did not pull § 87(2)(b) out or physically grab him and PO Lupo did not pull § 87(2)(b) out or physically grab him.

PO Sepulveda handcuffed § 87(2)(b) whom he described as being compliant, and walked him to the rear of the van. He denied pushing § 87(2)(b)'s face up against the van, opening § 87(2)(b)'s waistband, or putting his hand inside § 87(2)(b)'s pants, and he did not recall § 87(2)(b) ever ending up on the ground. Around that time, PO Lupo recovered a fairly large amount of crack cocaine on the floor of the van, which PO Sepulveda saw and described as being a Ziplock bag with a twist-tie that contained what PO Sepulveda believed to be a crack rock, slightly smaller than a quarter in size. PO Sepulveda did not see where he recovered it from.

PO Lupo walked § 87(2)(b) to the back of the van, where PO Sepulveda and § 87(2)(b) were. PO Sepulveda believed § 87(2)(b) was handcuffed at that point and described § 87(2)(b)'s demeanor as "okay" but not compliant; § 87(2)(b) initially refused to come to the back of the van. PO Lupo had two scalpels in his hand but PO Sepulveda did not know from where PO Lupo had recovered them. PO Sepulveda did not recover either of the scalpels and believed that one was on either § 87(2)(b) or § 87(2)(b) and one was in the van. PO Lupo began talking to § 87(2)(b) and § 87(2)(b) on the rear driver's side of the van, while PO Sepulveda went to the front driver's side of the van and checked to make sure there was nothing in the immediate area of the driver's seat, looking around the gas pedal and brake area but not going in the passenger's side at all. He did not find anything as a result of the search.

Within seconds, PO Lupo called to PO Sepulveda that § 87(2)(b) was attempting to swallow something and PO Lupo later told PO Sepulveda that he saw something in § 87(2)(b)'s mouth and when he told § 87(2)(b) to open his mouth, § 87(2)(b) said, "I ain't going back, f this, f that." § 87(2)(b) then chewed on a crack rock and that was when PO Lupo called for PO Sepulveda to come. PO Lupo had grabbed § 87(2)(b)'s mouth but when PO Sepulveda came up, § 87(2)(b) started running around and shook PO Lupo off of him. PO Sepulveda then grabbed § 87(2)(b) by the jaw and could see what he believed to be crack in § 87(2)(b)'s mouth, as well as "fronts, false teeth that were over his real teeth. § 87(2)(b) never made comments about it being a peppermint ball and PO Sepulveda believed he was trying to commit suicide by swallowing the crack. The officers were telling him to let go/spit out what he had in his mouth.

PO Sepulveda initially stated that § 87(2)(b) brought the officers down to the ground with him, then he stated that § 87(2)(b) was tackled to the ground. He finally stated that § 87(2)(b) pushed the officers down on the ground with him. § 87(2)(b) bit PO Sepulveda's left hand, which was still holding his jaw at the time, so PO Sepulveda punched him several times on the face near his jaw with his right hand to get him to let go. § 87(2)(b) was also kicking the officers but neither of them kicked § 87(2)(b) back. PO Sepulveda stated that PO Lupo may have punched § 87(2)(b) but he did not witness this happen.

As soon as § 87(2)(b) let go of PO Sepulveda's hand, PO Sepulveda stood up; he did not punch § 87(2)(b) at any point when he was not biting him. § 87(2)(b) spit out the crack that was in his mouth and PO Lupo held him with his hands palm down on § 87(2)(b)'s body. No officer, including PO Sepulveda, used pepper spray against § 87(2)(b). PO Sepulveda was not aware of § 87(2)(b)'s "fronts" coming out at any point during the incident. PO Sepulveda thought PO Lupo may have called for assistance, but he was not sure. PO Sepulveda did not know what § 87(2)(b) was doing while this was happening, but he thought other officers came and detained him while he and PO Lupo were dealing with § 87(2)(b) multiple uniformed male officers, including those from sector A, responded to the scene.

PO Lupo and PO Sepulveda picked up § 87(2)(b) who continued to kick and flail, and they put him in the back seat of a patrol car. PO Sepulveda did not recall if additional officers assisted them in walking § 87(2)(b) to the patrol car, but uniformed officers opened the door of the patrol car for them. § 87(2)(b) attempted to kick out the windows of the patrol car and was spitting at everybody. PO Sepulveda stated that it was possible that an officer tried to pull § 87(2)(b) into the patrol car from the other side, but he was not aware of § 87(2)(b)'s clothes ever being ripped as a result of the incident. PO Sepulveda took off one of § 87(2)(b)'s shoes at one point because § 87(2)(b) attempted to kick him with it. The shoe was later returned to § 87(2)(b). Sgt. Warshefskie, who was on the scene, told the officers to take the prisoners back to the precinct; he did not have any physical contact with § 87(2)(b).

Sector A transported § 87(2)(b) to the 120th Precinct; PO Sepulveda did not recall which sector transported § 87(2)(b) but he did not have any issues with § 87(2)(b) and did not think any other officer had any issues with § 87(2)(b). From the 120th Precinct, PO Sepulveda went to § 87(2)(b) Hospital for the bite wound; he did not recall how he got there but § 87(2)(b) was there as well. § 87(2)(b) had a little bit of swelling to his face as a result of PO Sepulveda punching him, which PO Sepulveda confirmed in § 87(2)(b)'s arrest photo. PO Sepulveda's injury was cleaned and he had to take a 30 day "cocktail" to prevent him from getting Hepatitis or HIV. He did not recall if anyone took pictures of his injury, but on the date of his interview, he presented a scar on the forefinger of his left hand, approximately the size of a dime, which he stated was much larger on the date of the incident. He was shown the command log entry that lists him as being the arresting officer, but he stated that he was not the arresting officer as he had to go the hospital; he was there until he ended his tour at 8:00 AM. § 87(2)(b) was still at the hospital when PO Sepulveda left.

PO Michael Christiano

On May 19, 2008, PO Michael Christiano, a § 87(2)(b), was interviewed at the CCRB (encl 13D-F). PO Christiano was working from 5:30 PM on August 22, 2007, until 2:05 AM on August 23, 2007, dressed in plainclothes and assigned to SNEU with PO Lupo and PO Sepulveda in an unmarked blue Nissan Maxima, which PO Sepulveda was driving. PO Christiano was riding in the back passenger's seat; he had no relevant memo book entries relating to this incident and no memo book entries around the time of the incident or 1:14 AM (encl 13A-C).

PO Christiano recalled that both PO Lupo and PO Sepulveda observed the drug transaction, and that they stopped to further observe what was happening after the transaction took place. They then stopped the individuals, whom PO Christiano described as being a black male and a Hispanic male, both in their mid-thirties with medium builds. The Hispanic male, identified by PO Christiano later by name as § 87(2)(b) was driving and had been in the vehicle when the black male, identified by PO Christiano later by name as § 87(2)(b) made the transaction outside of the vehicle; they were the only two involved in the transaction and there was no one else in the area. As the officers approached, § 87(2)(b) got in the vehicle and the officers turned on their lights and stopped the vehicle within ten feet of where the drug transaction took place.

PO Christiano approached the rear of the passenger's side of the vehicle, PO Sepulveda approached the driver's side of the vehicle, and PO Lupo approached the front passenger's side. The officers had their shields on the outside of their clothing and verbally identified themselves as officers. PO Christiano could not hear what was being said between the other officers and the civilians and did not hear if either officer asked for license or registration. PO Lupo observed crack and cutting instruments, which he later told PO Christiano, but PO Christiano could not see anything where he was. The occupants of the vehicle were removed for the officers' safety and because they were under arrest due to the drugs PO Lupo had observed. PO Christiano stated that it was the officers' intention to arrest them when they first approached the vehicle.

The officers asked § 87(2)(b) and § 87(2)(b) to step out of the vehicle; both of them complied. PO Sepulveda frisked § 87(2)(b) and handcuffed him, then he asked PO Christiano to secure § 87(2)(b) on the driver's side, which PO Christiano did. [PO Christiano initially stated that PO Lupo frisked and handcuffed § 87(2)(b) and had PO Christiano secure him; he later attributed those actions to PO Sepulveda with § 87(2)(b). PO Christiano did not see PO Sepulveda or PO Lupo ever open either individual's pants and look or reach inside. From where he was initially, PO Christiano could see what was happening with PO Lupo but not PO Sepulveda. PO Christiano could, however, see PO Sepulveda handcuff § 87(2)(b) whom he described as "very compliant."

PO Christiano moved to the rear of the vehicle with § 87(2)(b) and made sure he did not try to run. PO Sepulveda went to the vehicle to recover the drugs that had been observed; he recovered crack and scalpels but PO Christiano did not see where in the vehicle PO Sepulveda searched or whether he searched the trunk. PO Christiano recalled both individuals had scalpels on them but he later stated that one was in the vehicle and one was in the possession of either § 87(2)(b) or § 87(2)(b). He thought the scalpels would have been used as either weapons or to cut up crack.

During this time, PO Lupo was dealing with § 87(2)(b) who initially was compliant but was "a little angry." PO Lupo observed that § 87(2)(b) had crack in his mouth and began struggling with him, attempting to handcuff him. § 87(2)(b) made no comments about there being a peppermint ball in his

mouth, but he was mumbling and PO Christiano recalled him having a bulge in his mouth. PO Lupo called for PO Sepulveda to come assist him, and PO Sepulveda grabbed § 87(2)(b) by the cheeks in an effort to get the crack out of his mouth. PO Christiano did not see either officer grab § 87(2)(b) by the throat or choke him. § 87(2)(b) bit PO Sepulveda and began wrestling with and shoving both officers, at which point they all fell to the ground.

As soon as he saw the struggle, PO Christiano ran over to assist PO Lupo and PO Sepulveda, but they told him to stay with § 87(2)(b). § 87(2)(b) did not become involved in the situation with § 87(2)(b) and PO Christiano did not push § 87(2)(b) up against the vehicle or have him get down on the ground. PO Christiano did not see much of what happened after that because he was at the rear of the vehicle, and he did not see either officer ever punch § 87(2)(b). PO Christiano made a call for assistance and within minutes, multiple units, including Sgt. Warshefskie, responded to the scene. At that time, § 87(2)(b) was on the ground and the officers picked him up and walked him to a patrol car. PO Christiano did not have any physical contact with § 87(2)(b).

§ 87(2)(b) was not compliant with being placed in a marked patrol car; he was kicking, trying to kick the door closed, and then, in the patrol car, trying to kick the window out. No officers used pepper spray against § 87(2)(b) and PO Christiano did not see any officer grab § 87(2)(b) from the other side of the car and pull him in; he was not aware of § 87(2)(b)'s shoe coming off or his clothes being ripped. Within minutes, all the officers left the scene. PO Christiano believed that PO Sepulveda recovered the crack from the side of the van, where the struggle took place, and he heard later that § 87(2)(b) spit out the crack. PO Christiano was not aware of § 87(2)(b) having "fronts" or of them coming out during the incident. At the end of the incident there were approximately 5-7 people outside, just watching what was happening but not intervening.

PO Christiano saw § 87(2)(b) back at the 120th Precinct stationhouse, but he did not observe any injuries, specifically swelling or a black eye, on § 87(2)(b) and § 87(2)(b) did not complain of pepper spray being used against him. PO Christiano did not recall seeing PO Sepulveda back at the 120th Precinct stationhouse; he was not sure if PO Sepulveda went directly to Richmond University Hospital or back to the precinct first.

Sgt. Robert Warshefskie

On February 6, 2008, Sgt. Robert Warshefskie, a § 87(2)(b) was interviewed at the CCRB (encl 9D-F). Sgt. Warshefskie was working from 5:15 PM on August 22, 2007, until 2:12 AM on August 23, 2007, as the SNEU supervisor. He was assigned to an unmarked grey Chevy, with PO Pedro as his operator. He did not have any relevant entries in his memo book (9A-C).

Sgt. Warshefskie stated that on August 23, 2007, at approximately 1:14 AM, he was at the 120th Precinct stationhouse when he received a 10-85 (call for assistance) that had come over the radio from PO Lupo, PO Sepulveda, and PO Christiano, who were involved in an arrest on Roff Street and Bowen Street. He and PO Pedro responded to the call, and PO Pedro dropped him off on the corner; he then walked over to where officers were putting a handcuffed big, light-skinned black male, believed by Sgt. Warshefskie to be § 87(2)(b) into a marked patrol car. From his recollection, § 87(2)(b) had swelling on the side of his face.

There were a few patrol cars there at the time and Sgt. Warshefskie recalled PO Sepulveda was near a marked van holding his hand, which was bleeding. § 87(2)(b) was unwilling to get in the patrol car, and he refused to bend down or put his legs in the car. Sgt. Warshefskie recalled that PO Lupo was trying to push § 87(2)(b) by his head and his stomach to get him to go into the patrol car; he did not recall seeing PO Christiano or PO Pedro on the scene, but there were several other officers in the area. He specifically did not recall any other supervisors on the scene. A uniformed officer went around to the other side of the car and pulled § 87(2)(b) in by his shoulders. § 87(2)(b) was being combative; he was kicking at the officers and trying to pull away. Sgt. Warshefskie estimated it took 20-30 seconds to get § 87(2)(b) in the patrol car.

Sgt. Warshefskie went over to the car in which § 87(2)(b) was being placed and directed the officers to put § 87(2)(b)'s seatbelt on him so he could not reach the windows. § 87(2)(b) was attempting to kick out the windows of the car, but did not actually kick the windows out and Sgt. Warshefskie did not recall which officer put § 87(2)(b)'s seatbelt on him. § 87(2)(b) was not complaining of any injuries and Sgt. Warshefskie did not recall his clothes being ripped or his shoe coming off during the incident. Sgt. Warshefskie believed there were two individuals § 87(2)(b) and another individual in a white van initially

and that the second individual was also arrested. § 87(2)(b) went back to the 120th Precinct stationhouse, and from there to the hospital.

During this time, there were at least 20 civilians on the scene involved in a “mini-riot.” The civilians were yelling, screaming, and refusing to back up when they were told to do so. The officers were trying to keep the crowd back. Sgt. Warshefskie did not recall any of them becoming involved in the incident, but as soon as he got there, the officers put § 87(2)(b) in a patrol car and left. He estimated he was on the scene for a total of 2 minutes; during that time, he did not see any officer choke, punch, or pinch § 87(2)(b) and he did not recall him being pepper-sprayed or officers searching the van. Sgt. Warshefskie did not have physical contact with § 87(2)(b) at all.

At the 120th Precinct stationhouse, Sgt. Warshefskie saw § 87(2)(b) with crack all over his mouth and teeth; Sgt. Warshefskie did not recall him having “fronts.” Sgt. Warshefskie believed crack was recovered both at the scene and from § 87(2)(b)’s mouth. The officers from the arrest had informed Sgt. Warshefskie that they observed a hand-to-hand transaction between a man in a wheelchair and two men in a van. During the apprehension, they discovered § 87(2)(b) had crack in his mouth, and when PO Sepulveda put his hand up to § 87(2)(b)’s mouth to get him to spit it out, § 87(2)(b) bit him. PO Sepulveda appeared to have a bite injury; he went to § 87(2)(b) Hospital and was out line of duty for two months. Sgt. Warshefskie was afraid § 87(2)(b) was going to overdose because he was “zoning out” so he called EMS and they transported § 87(2)(b) to the hospital (probably § 87(2)(b)). Sgt. Warshefskie remained at the precinct and filled out paperwork, including PO Sepulveda’s Line-of-Duty paperwork.

PO James Pedro, PO § 87(2)(b) Brooks

On May 8, 2008, PO James Pedro, a § 87(2)(b) was interviewed at the CCRB (encl 11E-F). On May 12, 2008, PO § 87(2)(b) Brooks, a § 87(2)(b) was interviewed at the CCRB (encl 12C-D). PO Pedro was working from 5:30 PM on August 22, 2007, until 2:05 AM on August 23, 2007, assigned to an unmarked blue Altima as Sgt. Warshefskie’s operator. PO Nieves was also in the vehicle. PO Pedro did not recall if he was in uniform or in plainclothes. PO Brooks was working from 11:15 PM on August 22, 2007, until 7:50 AM on August 23, 2007, dressed in uniform and assigned to patrol sector A in marked patrol car 2270, with PO Richard Dagnese. PO Brooks was the operator. PO Pedro had no relevant memo book entries (encl 11A-D); PO Brooks had an entry that he was assigned a dispute at § 87(2)(b) at 1:00 AM, which he stated is nowhere near Roff Street and Bowen Street (encl 12A-B). Their statements have been combined below.

PO Pedro responded to a 10-85 or 10-13 call (he did not recall which) with Sgt. Warshefskie; he did not recall if PO Nieves was with them. He estimated it took 3 minutes to get to the location where PO Frank Lupo and PO Manny Sepulveda were dealing with a large crowd. PO Pedro came within ten feet of the officers but did not get out of the vehicle. Sgt. Warshefskie got out of the vehicle and spoke with the officers but PO Pedro could not hear what was said. He estimated that he was on the scene for ten minutes; during that time he did not see any officer punch, choke, pinch, or pepper-spray anyone, he did not see anyone being disorderly or officers putting anyone in a patrol car, and he was not aware of any arrestees being injured. He did not see any officer frisking or searching anyone on the scene and specifically did not see any officer open anyone’s waistband and look down the front or back of anyone’s pants.

PO Pedro did not have any interaction (verbal or physical) with anyone on the scene; after ten minutes, Sgt. Warshefskie got back in the vehicle and the two of them went back to the 120th Precinct stationhouse, where they had been when they received the call for assistance. At the precinct, PO Pedro spoke with PO Lupo, who informed him that he had been bitten on the hand during the incident. PO Pedro did not see any arrestees while he was at the stationhouse and he was not aware of anyone’s clothing being ripped or anyone missing a shoe. He did not recall anyone being taken to the hospital for swallowing crack or anyone having a scalpel. PO Pedro and PO Brooks were shown but they did not recognize the arrest photos of § 87(2)(b) and § 87(2)(b).

PO Brooks did not recall the incident at all and to his recollection did not respond to the scene; he did not recall why he would not have responded, but thought he might have been too far away.

Officers Not Interviewed

Although the 120th Precinct roll call also lists PO Jessica Nieves, a Hispanic female, as being assigned to the SNEU team, no one specifically named her as being on the scene and neither § 87(2)(b) nor § 87(2)(b) made any statements that there were any females on the scene. Additionally, Sgt. Warshefskie and PO Pedro, who were her partners, did not recall her being with them at the time of the incident, and by their statements, if she had been there, she would have been minimally involved in the incident. Therefore, PO Nieves was not interviewed. After PO Brooks was interviewed, it was determined that PO Dagnese's statement would not affect the outcome of the case, therefore he was not interviewed.

Medical Records

§ 87(2)(b) was treated at § 87(2)(b) Medical Center (§ 87(2)(b) Hospital Staten Island) (encl 16A-ZZZ). His chief complaint lists that his face hurt and he swallowed narcotics. The records indicate that NYPD witnessed him swallow rock cocaine, but § 87(2)(b) did not make any statements or allegations to medical personnel. The left side of his face was swollen and the right side of his face had an abrasion. § 87(2)(b) refused to take a drug test; he was described as agitated, uncooperative, and at times, unresponsive. He eventually tested positive for cocaine and PSP.

Police Documents

The **SPRINT** and **AIDED** requests for this incident came back negative.

The **arrest photo** for § 87(2)(b) shows no visible injuries (encl 8D); the **arrest photo** for § 87(2)(b) shows some swelling and bruising around his left eye (encl 7G). § 87(2)(b)'s clothing appears intact.

The **roll call** for tour 3 on August 22, 2007, of the 120th Precinct lists PO Lupo, PO Sepulveda, PO Christiano, PO Pedro, and PO Nieves assigned to SNEU, with Sgt. Warshefskie as their supervisor (encl 19A-C). The **roll call** for tour 1 on August 23, 2007, of the 120th Precinct lists PO Brooks and PO Dagnese assigned to patrol sector A in marked patrol car 2270 (encl 19D).

According to the **command log** for the 120th Precinct from August 23, 2007, § 87(2)(b) and § 87(2)(b) were arrested by PO Sepulveda and were brought in at 1:45 AM (encl 18A). § 87(2)(b)'s condition is apparently normal; no strip-search is listed for him. § 87(2)(b) is listed as having a swollen left side of his face; he is also listed as "unstable," and was removed to St. Vincent's Hospital at 2:50 AM.

One large rock of crack cocaine, recovered from the vehicle, and one large rock of crack cocaine with smaller pieces, recovered from § 87(2)(b)'s mouth, are listed on the **vouchers** relating to this incident. They total 8.29 grams and were vouchered as arrest evidence (encl 14P).

Notice of Claim

A check with the New York City Law Department found no notice of claim filed in regards to this incident.

§ 87(2)(b)

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§ 87(2)(b)

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Subject Officers' CCRB Histories (encl 3A-B)

PO Frank Lupo has been employed with the NYPD for 7 years § 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

PO Manuel Sepulveda has been employed with the NYPD for 7 years § 87(2)(g), § 87(4-b)

Conclusions and Recommendations

Identification of Subject Officers

§ 87(2)(b) alleged that an officer searched the vehicle after he and § 87(2)(b) were taken out of it. Both PO Lupo and PO Sepulveda stated that they searched the vehicle and although § 87(2)(b)'s description of the officer who searched the vehicle more closely matches PO Sepulveda, the search was based on PO Lupo's observation of narcotics in plainview in the vehicle, and it is possible that both officers conducted a search of the vehicle. Therefore, the vehicle search allegations are pleaded against both of them. § 87(2)(b) alleged that the officer who initially was dealing with § 87(2)(b) came up and choked him. Again, both PO Lupo and PO Sepulveda stated that they were initially dealing with § 87(2)(b) and it is unclear which officer this allegation is made against, therefore the chokehold allegation is being pleaded against "an officer." Both PO Lupo and PO Sepulveda admitted punching § 87(2)(b) therefore physical force allegations are being pleaded against both of them. It is unclear which officer allegedly used pepper spray against § 87(2)(b) as he could not describe the officer, therefore the pepper spray allegation is being pleaded against "an officer." It is unclear which officer allegedly ripped § 87(2)(b)'s clothing, therefore a property damaged allegation is being pleaded against "an officer."

Undisputed Facts

It is undisputed that PO Lupo, PO Sepulveda, and PO Christiano conducted a car stop of § 87(2)(b) and § 87(2)(b) on August 23, 2007. It is undisputed that § 87(2)(b) and § 87(2)(b) were asked to exit the vehicle and, after doing so, were frisked and handcuffed. It is undisputed that scalpels were found on both § 87(2)(b) and § 87(2)(b) and that the front seat of the van they were in was searched. Undisputed is the fact that § 87(2)(b) PO Lupo, and PO Sepulveda physically struggled during the incident and that PO Lupo and PO Sepulveda punched § 87(2)(b) multiple times in the face. Undisputed is the fact that § 87(2)(b) resisted being placed in the patrol car and that during the process his shoe came off. It is undisputed that

§ 87(2)(b) suffered bruising and swelling to his face and that he and PO Sepulveda were treated at the hospital. It is undisputed that § 87(2)(b) was kept at the hospital for several days.

§ 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

The vehicle stop and the searches of § 87(2)(b) and § 87(2)(b) are not being pleaded as they were stopped for a drug transaction and were subsequently arrested for drug-related charges. § 87(2)(b) alleged that he was strip-searched on the scene and an officer pushed him up against the vehicle, but he did not provide a formal statement and no one corroborated either of these allegations. Additionally, he did not make these allegations to IAB. Therefore, no strip-search allegation and no force allegation are being pleaded on his behalf. § 87(2)(b) alleged that he asked the officers from IAB to identify themselves but they did not provide identification. Upon reviewing the IAB interview tape, however, it is evident that they provided their names to § 87(2)(b) two separate times and when he asked to see their badges, it is audible they provided their badges to him. He then asked for something in writing, proving they were from IAB; however, they informed him that they did not have anything in writing indicating they were from IAB. It is clear they did not refuse to provide proper identification to him, and that they provided him their names. Therefore the allegations of refusal to provide name/shield are not being pleaded.

Allegation A: PO Frank Lupo searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B: PO Manuel Sepulveda searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

As stated above in the assessment of evidence, both PO Lupo and PO Sepulveda stated that they searched the vehicle, and it is unclear which officer this allegation is made against, § 87(2)(g)

Allegation C: An officer used a chokehold against § 87(2)(b)

§ 87(2)(b) alleged that an officer grabbed him by the throat and was choking him, but he did not make this allegation to either IAB or medical personnel and it is unclear which officer he is making this

allegation against; both PO Lupo and PO Sepulveda were involved in the subsequent physical struggle with § 87(2)(b) and both of them stated that although they did not place him in a chokehold, they did have their hands in the area near his jaw. Both officers stated that this was in an effort to force § 87(2)(b) to release PO Sepulveda's hand, which he was biting, § 87(2)(b), § 87(2)(g)

Allegation D: PO Frank Lupo used physical force against § 87(2)(b)

Allegation E: PO Manuel Sepulveda used physical force against § 87(2)(b)

As discussed in the assessment of evidence, § 87(2)(b) was biting PO Sepulveda and PO Sepulveda and PO Lupo admitted punching § 87(2)(b) until he released PO Sepulveda's hand. § 87(2)(b) sustained swelling and bruising near his left eye, which is consistent with PO Sepulveda punching him with his right hand, as he stated. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g). P.G. 203-11 allows officers to use physical force when apprehending an individual, but only the amount necessary to overcome resistance (encl 2A). § 87(2)(b), § 87(2)(g)

Allegation F: An officer used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that an officer (he could not describe) used pepper spray against him while the other officers were punching him and that later, when he was being placed in a patrol car, an officer pepper-sprayed him again. All of the officers denied using pepper spray against § 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g). No officers alleged that they suffered the affects of pepper spray and although pepper spray is often used against resistant individuals, § 87(2)(g)

Allegation G: An officer damaged § 87(2)(b)'s property.

§ 87(2)(b) alleged that an officer ripped his clothing in the process of placing him in the patrol car. § 87(2)(b), § 87(2)(g). Additionally, § 87(2)(b)'s arrest photo shows no damage to his clothing. § 87(2)(b), § 87(2)(g)

Investigator:

Sarah E. Turner

Date:

Supervisor:

Date:

Reviewed by:

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